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U.S. Naval War College (Editor)

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TOPIC IV.

Should the destruction of captured vessels be allowed before adjudication by a prize court? If so, under what condition?

CONCLUSION.

Enemy vessels.—If there are controlling reasons why enemy vessels may not be sent in for adjudication, as unseaworthiness, the existence of infectious disease, or the lack of a prize crew, they may be appraised and sold, and if this can not be done may be destroyed. The imminent danger of recapture would justify destruction, if there was no doubt that the vessel was good prize. But in all such cases all the papers and other testimony should be sent to the prize court, in order that a decree may be duly entered.

Neutral vessels.—If a seized neutral vessel can not for any reason be brought into port for adjudication, it should be dismissed.

DISCUSSION AND NOTES.

Two kinds of prize.—Prize may be of two kinds—

- (1) Enemy property, or
- (2) Neutral property.

The destruction of enemy property is a matter quite different from the destruction of neutral property. The destruction of an enemy vessel may involve the destruction of neutral property, and at the present time comparatively few cargoes belong wholly to citizens of a single state.

Cases involving the destruction of captures.—During the Revolutionary war captured vessels were regularly destroyed. During the war of 1812, also, it was the general practice to destroy captured enemy vessels; indeed, the

officers were instructed that unless their prizes were "very valuable and near a friendly port, it will be imprudent and worse than useless to attempt to send them in." The Confederate cruisers habitually destroyed captures during the civil war of 1861. The ground of destruction was asserted to be the impossibility of taking these prizes to home ports for adjudication. The burning of the German vessels *Ludwig* and the *Vorwarts* by a French cruiser October 21, 1871, was upheld by the French courts.

The cases most frequently cited are those of the *Actéon*, in 1815 (2 Dodson's Admiralty Reports, p. 48), and the *Felicity*, in 1819 (*ibid.*, p. 381). In both these instances the vessels were property of subjects of one of the belligerent states. They were sailing under license of the other belligerent. In the case of the *Felicity* the belligerent which had granted the license destroyed the vessel holding the license. The *Felicity*, which was destroyed, was a merchant ship of the United States sailing under a British license and destroyed by a British war vessel, but the license was not produced till the *Felicity* was already on fire.

Of this case Lord Stowell said:

Taking this vessel and cargo to be merely American the owners could have no right to complain of this act of hostility, for their property was liable to it in the character it bore at that period of enemy's property. There was no doubt that the *Endymion* had a full right to inflict it, if any grave call of public service required it. Regularly a captor is bound by the law of his own country, conforming to the general law of nations, to bring in for adjudication in order that it may be ascertained whether it be enemy's property; and that mistakes may not be committed by captors, in the eager pursuit of gain, by which injustice may be done to neutral subjects and national quarrels produced with the foreign states to which they belong. Here is a clear American vessel and cargo, alleged by the claimants themselves to be such, and consequently the property of enemies at that time. They share no inconvenience by not being brought in for the condemnation, which must have followed if it were mere American property; and the captors fully justify themselves to the law of their own country, which prescribes the bringing in, by showing that the immediate service in which they were engaged—that of watching the enemy's ship of war—the *President*, with intent to encounter her, though of inferior force, would not permit them to part with any of their own crew to carry her into a British port. Under this collision of duties nothing was left but to destroy her, for they could not, con-

sistently with their general duty to their own country or, indeed, its express injunctions, permit enemy's property to sail away unmolested. If impossible to bring in their next duty is to destroy enemy's property. Where doubtful whether enemy's property and impossible to bring in, no such obligation arises, and the safe and proper course is to dismiss. Where it is neutral the act of destruction can not be justified to the neutral owner by the gravest importance of such an act to the public service of the captor's own state; to the neutral it can only be justified, under any such circumstances, by a full restitution in value. These are rules so clear in principle and established in practice that they require neither reasoning nor precedent to illustrate or support them.

Before the time of Sir William Scott it had been generally regarded as legitimate and as doing the neutral no injustice to destroy his captured property, provided full remuneration was paid. Lord Stowell's later decisions seem to incline far more toward absolute prohibition of destruction of neutral vessels.

In the case of the *Dos Hermanos*, in 1825, Mr. Chief Justice Marshall delivered the opinion of the court, that—whatever might have been the ancient doctrine in England in respect to capture in war, it is now clearly established in that kingdom that all captures *jure belli* are made for the Government, and that no title of prize can be acquired but by the public acts of the Government conferring rights on the captors. (10 Wheaton's U. S. Supreme Court Reports, 306.)

In the case of the *Leucade*, in 1855, Dr. Lushington stated:

The general rule, therefore, is that if a ship under neutral colors be not brought to a competent court for adjudication the claimants are, as against the captor, entitled to costs and damages. Indeed, if the captor doubt his power to bring a neutral vessel to adjudication it is his duty to release her.

Regulations in regard to destruction before adjudication.—In the British Manual of Naval Prize Law, edited by Professor Holland in 1888, it is provided—

303. In either of the following cases:

(1) If the Surveying Officers report the Vessel not to be in a condition to be sent in to any port for Adjudication; or

(2) If the Commander is unable to spare a Prize Crew to navigate the Vessel to a Port of Adjudication the Commander should release the Vessel and Cargo without ransom, unless there is clear proof that she belongs to the Enemy.

304. But if in either of these cases there be clear proof that the

Vessel belongs to the Enemy, the Commander should remove her Crew and papers, and, if possible, her Cargo, and then destroy the Vessel. The Crew and the Cargo (if saved) should then be forwarded to a proper Port of Adjudication, in charge of a Prize Officer, together with the Vessel's Papers and the necessary Affidavits. Among the Affidavits should be one, to be made by the Prize Officer, exhibiting the evidence that the Vessel belonged to the Enemy, and the facts which rendered it impracticable to send her in for Adjudication (p. 86).

In an address on April 12, 1905, Professor Holland refers to this rule of the Admiralty Manual of 1888. He says:

While it is, on principle, most undesirable that neutral property should be exposed to destruction without inquiry, cases may occasionally occur in which a belligerent could hardly be expected to permit the escape of such property, though he is unable to send it in for adjudication. The contrary opinion is, I venture to think, largely derived from a reliance upon detached paragraphs in one of Lord Stowell's judgments on the subject—judgments which, taken together, show little more than that, in his view, no plea of national interest will bar the claim of a neutral owner to be fully compensated for the value of his property when it has been destroyed without judicial proof of its noxious character. "Where doubtful whether enemy's property, and impossible to bring in, the safe and proper course," says Lord Stowell, "is to dismiss." The Admiralty Manual of 1888 accordingly directs commanders who are unable to send in their prizes to "release the vessel and cargo without ransom, unless there is clear proof that she belongs to the enemy." This indulgence can hardly, however, be proclaimed as an established rule of international law, in the face of the fact that the sinking of neutral prizes is under certain circumstances permitted by the prize codes, not only of Russia, but also as of such powers as France, the United States, and Japan (1904). (83 Fortnightly Review, 802.)

The Japanese regulations in the Chino-Japanese war of 1894 provide in article 22 that—

If the enemy's vessels are unfit to be sent to a port, as stated in Article 18, the commander should break up the vessels, after taking the crew, the ship's papers, and the cargo, if possible, into his ship. The crew, the ship's papers, and the cargo should be sent to a port, as stated in Article 18. (Takahashi, *International Law During the Chino-Japanese War*, p. 183.)

The Japanese regulations of March 7, 1904, are general in character. Article XCI provides:

In the following cases, and when it is unavoidable, the captain of the man-of-war may destroy a captured vessel, or dispose of her ac-

according to the exigency of the occasion. But before so destroying or disposing of her he shall transship all persons on board and, as far as possible, the cargo also, and shall preserve the ship's papers and all other documents required for judicial examination:

1. When the captured vessel is in very bad condition and can not be navigated on account of the heavy sea.
2. When there is apprehension that the vessel may be recaptured by the enemy.
3. When the man-of-war can not man the prize without so reducing her own complement as to endanger her safety.

The United States instructions to blockading vessels and cruisers in 1898 does not specifically restrict destruction to enemy vessels. In article 28 is the provision that—

If there are controlling reasons why vessels may not be sent in for adjudication, as unseaworthiness, the existence of infectious disease, or the lack of a prize crew, they may be appraised and sold; and if this can not be done they may be destroyed. The imminent danger of recapture would justify destruction if there was no doubt that the vessel was good prize. But in all such cases all the papers and other testimony should be sent to the prize court, in order that a decree may be duly entered. (General Order 492, June 20, 1898.)

According to the treaty stipulations between the United States and Italy of February 26, 1871, it would not be a light matter for a United States commander to destroy an Italian vessel. Article XX provides:

In order effectually to provide for the security of the citizens and subjects of the contracting parties, it is agreed between them that all commanders of ships of war of each party, respectively, shall be strictly enjoined to forbear from doing any damage to, or committing any outrage against, the citizens or subjects of the other or against their vessels or property; and if the said commanders shall act contrary to this stipulation they shall be severely punished and made answerable in their persons and estates for the satisfaction and reparation of said damages of whatever nature they may be. (Compilation of Treaties in Force, p. 455.)

The Russian rules in regard to maritime prizes, of March 27, 1895, approved by the admiralty board September 20, 1900, allow the destruction of captured vessels under certain circumstances.

ART. 21. Dans les cas extraordinaires où la conservation du bâtiment capturé sera reconnue impossible par suite du mauvais état dans lequel il se trouve, de son peu de valeur, du danger qu'il court d'être repris par l'ennemi, du fait que les ports sont trop éloignés ou bloqués, qu'il constitue un embarras pour le bâtiment capteur ou un obstacle au

succes de ses opérations, le commandant est autorisé, sous sa responsabilité personnelle, à bruler ou à couler sa capture, après avoir transbordé les hommes et autant que possible le chargement et avoir pris les mesures voulues pour conserver les papiers et objets qui se trouvent à bord et qui pourraient être nécessaires pour éclairer l'affaire lors qu'elle sera examinée conformément à la procédure des prises. Le commandant dresse, d'après l'article 21 du code maritime, procès-verbal des circonstances qui ont motivé la destruction du bâtiment capturé.

Article 40 of the Russian instructions of 1901 provides that—

In the following and other similar extraordinary cases the commander of the imperial cruiser has the right to burn or sink a detained vessel after having previously taken therefrom the crew, and, as far as possible, all or part of the cargo thereon, as well as all documents and objects that may be essential in elucidating the matter in the prize court:

(1) When it is impossible to preserve the detained vessel on account of its bad condition.

(2) When the danger is imminent that the vessel will be recaptured by the enemy.

(3) When the detained vessel is of extremely little value, and its conduct into port requires too much waste of time and coal.

(4) When the conducting of the vessel into port appears difficult owing to the remoteness of the port or a blockade thereof.

(5) When the conducting of the detained vessel might interfere with the success of the naval war operations of the imperial cruiser or threaten it with danger.

The commander prepares a memorandum under his signature and that of all the officers concerning the circumstances which have led him to destroy the detained vessel, which memorandum he transmits to the authorities at the earliest possible moment.

NOTE.—Although Article 21 of the Regulations on Maritime Prizes of 1895 permits a detained vessel to be burned or sunk "on the personal responsibility of the commander," nevertheless the latter by no means assumes such responsibility when the detained vessel is actually subject to confiscation as a prize, and the extraordinary circumstances in which the imperial vessel finds itself absolutely demand the destruction of the detained vessel. (U. S. Foreign Relations, 1904, p. 752.)

Russian instructions of August 5, 1905, were to the effect that—

Russian vessels were not to sink neutral merchantmen with contraband on board in the future, except in case of direst necessity, but in cases of emergency to send prizes into neutral ports.

The Institute of International Law at Turin in 1882 provided for the destruction of an enemy's vessel—

- (1) If unseaworthy.
- (2) If unable to accompany the fleet.
- (3) If there is danger from a superior force of the enemy.
- (4) If the captor can not without danger spare a prize crew, and
- (5) If the port to which the vessel should be conducted is too remote. (Annuaire 1883, p. 221.)

From these discussions it seems to be evident that the destruction of an enemy vessel is permitted under certain restrictions.

Neutral restriction of entrance of prize.—The hospitality once accorded to prize has gradually lessened. Formerly prizes were admitted to neutral ports, but in recent years neutrality proclamations have often forbidden the privilege. The British proclamation of 1898 says:

Armed ships of either belligerent are interdicted from carrying prizes made by them into the ports, harbors, roadsteads, or waters of the United Kingdom, the Isle of Man, the Channel Islands, or any of Her Majesty's colonies or possessions abroad.

An identical position was taken on February 10, 1904, in consequence of the Russo-Japanese war.

The regulations for the Netherlands Indies during the Russo-Japanese war of 1904-5 provide that—

Warships or privateers shall not be admitted to the harbors or outlets of the Netherlands when accompanied by prizes, except in the case of distress or want of provisions. As soon as the reason for their entry is passed they shall leave immediately. They shall not ship more provisions than is necessary for them to reach the nearest harbor of the country to which they belong, or that of one of their allies in the war. So long as they keep their prizes coal shall not be supplied them. When warships pursued by the enemy shall seek shelter in Netherlands Indies waterways, they shall abandon their prizes.

The Danish proclamation of neutrality of February 10, 1904, reads:

Prizes must not be brought into a Danish harbor or roadstead except in evident case of stress, nor must prizes be condemned or sold therein.

The French proclamations of neutrality in the Spanish-American war in 1898 and in the Russo-Japanese war in 1904 were identical in providing:

The Government decides in addition that no ship of war of either belligerent will be permitted to enter and to remain with her prizes in the harbors and anchorages of France, its colonies and protectorates, for more than twenty-four hours, except in the case of forced delay or justifiable necessity.

This general tendency to prohibit the entrance of prizes into neutral ports makes the disposition of prizes taken at a distance from the home country a serious question. The difficulty of bringing the prizes in for adjudication would often be so great as to make capture useless. If the belligerent must generally bring captures before the prize court, the very burden of this bringing in the captured vessels would tend to lessen the frequency of such captures. There would be at the same time a greater incentive toward the destruction of vessels which it might be advantageous to the belligerent to destroy, for such vessels being denied entrance to neutral ports, and being remote from a home port, must be destroyed or released.

Opinions in regard to destruction of captured vessels.—Sir Robert Phillimore says:

If a neutral ship be destroyed by a captor, either wantonly or under alleged necessity, in which she herself was not directly involved, the captor, or his government, is responsible for the spoliation. The gravest importance of such an act to the public service of the captor's own state will not justify its commission. The neutral is entitled to full restitution in value. (International Law, III, CCXXXIII.)

Walker makes the general statement that—

In certain cases, as where the captor can not with safety to himself spare a sufficient number of men to man the captured prize, or where the prize is too much injured to make an extended voyage, captured property may be disposed of before adjudication, or even destroyed, but a captor so acting without reasonable justification renders himself liable in respect of neutral property improperly dealt with, and will in all likelihood, on subsequent proceedings in a prize court, be heavily mulcted in damages and costs. Destruction was, however, freely and systematically resorted to by the United States cruisers in the war of 1812-1814 and by the Confederates in the civil war. And in any case it is in the formal revision of the legitimacy of the proceedings of the captor and not in the actual handling of the proceeds that consists

the real value of the prize tribunal. So a sentence of condemnation may, it has been held in British courts, be well passed by a competent prize court on property taken after capture into and still lying within a neutral port, although in general it is the clear duty of the captor to bring his prize for adjudication as speedily as possible to a port of his own country.

For a neutral vessel destroyed by a belligerent the neutral proprietor has a clear claim to full indemnity from the destroyer; for neutral property destroyed with a justifiably destroyed hostile vessel no claim can be admitted by the belligerent. (Manual of International Law, p. 152.)

If the statement in the first clause above means to imply that the grounds which would be a "reasonable justification" for the destruction of a belligerent vessel may be a "reasonable justification" for the destruction of a neutral vessel, it is not according to the present idea in regard to the treatment of neutrals.

Hall says that—

Some authorities appear to look upon the destruction of captured enemy's vessels as an exceptionally violent exercise of the extreme rights of war * * * It is somewhat difficult to see in what the harshness consists of destroying property which would not return to the original owner if the alternative process of condemnation by a prize court were suffered. It has passed from him to the captor, and if the latter chooses rather to destroy than to keep what belongs to himself, persons who have no proprietary interest in the objects destroyed have no right to complain of his behavior. Destruction of neutral vessels or of neutral property on board an enemy's vessel would be a wholly different matter. (International Law, 5th ed., p. 459.)

Hall summarizes the relations of the captor to the neutral prize as follows:

In the absence of proof that he has rendered himself liable to penalties, a neutral has the benefit of those presumptions in his favor which are afforded by his professed neutrality. His goods are *prima facie* free from liability to seizure and confiscation. If then they are seized it is for the captor, before confiscating them or inflicting a penalty of any kind on the neutral, to show that the acts of the latter have been such as to give him a right to do so. Property therefore in neutral goods or vessels which are seized by a belligerent does not vest upon the completion of a capture. It remains in the neutral until judgment of confiscation has been pronounced by the competent courts after due legal investigation. The courts before which the question is brought whether capture of neutral property has been

effected for sufficient cause are instituted by the belligerent and sit in his territory, but the law which they administer is international law.

Such being the position of neutral property previously to adjudication, and such being the conditions under which adjudication takes place, a captor lies under the following duties: * * *

He must bring in the captured property for adjudication, and must use all reasonable speed in doing so. In cases of improper delay, demurrage is given to the claimant, and costs and expenses are refused to the captor. It follows as of course from this rule—which itself is a necessary consequence of the fact that property in neutral ships and goods is not transferred by capture—that a neutral vessel must not be destroyed; and the principle that destruction involves compensation was laid down in the broadest manner by Lord Stowell; where a ship is neutral, he said, “the act of destruction can not be justified to the neutral owner by the gravest importance of such an act to the public service of the captor’s own state; to the neutral it can only be justified under any circumstances by a full restitution in value.” It is the English practice to give costs and damages as well; to destroy a neutral ship is a punishable wrong; if it can not be brought in for adjudication, it can and ought to be released. If a vessel is not in a condition to reach a port where adjudication can take place, but can safely be taken into a neutral port, it is permissible to carry her thither, and to keep her there if the local authorities consent. In such case the witnesses, with the ship’s papers and the necessary affidavits, are sent in charge of an officer to the nearest port of the captor where a prize court exists. (International Law, 5th ed., p. 733.)

A late English opinion is as follows:

If the prize is a neutral ship, no circumstances will justify her destruction before condemnation. The only proper reparation to the neutral is to pay him the full value of the property destroyed. (Atlay’s edition Wheaton’s International Law, p. 507, sec. 359e.)

In an address before the British Academy, April 12, 1905 (Proceedings, Vol. III, p. 12), Professor Holland sets forth the present position in regard to the destruction of neutral vessels. He says:

If ship and cargo belong, beyond question, to the enemy, he may, after taking off the crew, sink the ship, the property in which is now vested in his own government.

If, however, the ship or cargo be neutral, the matter is not so simple. The neutral government is not bound to acquiesce in the destruction of the possibly innocent property of its subjects, at any rate unless some overwhelming necessity can be shown for the course which has been adopted; if, indeed, even overwhelming necessity would be sufficient to justify it.

The destruction of a neutral ship must be clearly distinguished from the destruction of a belligerent ship even under the principles at present generally accepted. If the belligerent's vessel is good prize it may be lost to that belligerent from the time when his opponent captures it. This is not always necessarily the case, because it may be recaptured or a court for some reason may not condemn the vessel. "Quarter-deck courts" should be avoided, except in extreme instances, even in deciding on the destruction of enemy vessels. Such vessels may have neutral cargo, which may be in no way involved in the hostilities. The principle of the Declaration of Paris that "neutral goods, with the exception of contraband of war, are not liable to capture under enemy's flag," may be involved in such manner as to make great caution necessary in destroying vessels of the enemy before adjudication.

Much greater care should be taken before destroying a neutral vessel itself.

Lawrence, writing in 1895, says:

Meanwhile it is necessary to point out that a broad line of distinction must be drawn between the destruction of enemy property and the destruction of neutral property. The former has changed owners directly the capture is effected, and it matters little to the enemy subject who has lost it whether it goes to the bottom of the sea or is divided by public authority among those who have deprived him of it. But the latter does not belong to the captors till a properly constituted court has decided that their seizure of it was good in international law, and its owners have a right to insist that an adjudication upon their claim shall precede any further dealings with it. If this right of theirs is disregarded a claim for satisfaction and indemnity may be put in by their government. It is far better for a naval officer to release a ship or goods as to which he is doubtful, than to risk personal punishment and international complications by destroying innocent neutral property. Even where what is believed to be enemy property is concerned, and destruction or release becomes the only possible alternative, it would perhaps be wise to adopt the latter unless the hostile nationality of the vessel and ownership of the cargo are too clearly established to admit of mistake. But the necessity of rapid movement in modern naval warfare, combined with the fact that neutral ports will in most cases be closed to prizes, is almost certain to result in an increase of the practice of destruction unless the nations will consent to take a further step forward and prohibit the capture of private property unless it be contraband of war. (*Principles of International Law*, p. 406.)

Further it is generally admitted that the destruction of neutral property can only be justified to the neutral by full restitution of value. The naval officer destroying a neutral vessel would thus assume a serious responsibility in case the destruction is not justifiable. In case it is not warranted there would fall upon the belligerent destroying the neutral vessel not merely claim for full restitution of value, but also claim for damages.

The generally enunciated rule in regard to destruction of an enemy's vessel is, "an enemy's ship can be destroyed only after her crew has been placed in safety." If this is to be strictly interpreted, there would be considerable doubt as to whether the deck of a war vessel, whose commander fears that his prize is in imminent danger of recapture because of the approach of his enemy, would be a "place of safety." It is held that the property and persons of belligerents are subject to the hazard of war when coming within the field of operations. It would scarcely follow that such persons should be forced to assume such hazards, particularly when it is a matter of doubt before adjudication by the court whether the vessel is a proper subject for seizure. What is true of the belligerent vessel is even more emphatically true of a neutral vessel.

In regard to the destruction of prizes a telegram from the Department of State, Washington, August 6, 1904, says:

Replying to Mr. Choate's telegram of the 3d instant, Mr. Hay states that, as the Department is not sufficiently advised of all the facts and circumstances connected with the sinking of the *Knight Commander*, it is not prepared to express an opinion on the case, nor can it say that, in case of imperative necessity, a prize may not be lawfully destroyed by a belligerent captor. (Foreign Relations, U. S., 1904, p. 337.)

In a communication of Lord Landsdowne to the British ambassador at St. Petersburg, August 10, 1904, a protest against the destruction of neutral ships is made:

The position, already sufficiently threatening, is aggravated by the assertion on behalf of the Russian Government that the captor of a neutral ship is within his rights if he sinks it, merely for the reason that it is difficult, or impossible, for him to convey it to a national

port for adjudication by a Prize Court. We understand that this right of destroying a prize is claimed in a number of cases; among others, when the conveyance of the prize to a prize court is inconvenient because of the distance of the port to which the vessel should be brought, or when her conveyance to such a port would take too much time or entail too great a consumption of coal. It is, we understand, even asserted that such destruction is justifiable when the captor has not at his disposal a sufficient number of men from whom to provide a crew for the captured vessel. It is unnecessary to point out to Your Excellency the effects of a consistent application of these principles. They would justify the wholesale destruction of neutral ships taken by a vessel of war at a distance from her own base upon the ground that such prizes had not on board a sufficient amount of coal to carry them to a remote foreign port—an amount of coal with which such ships would probably in no circumstances have been supplied. They would similarly justify the destruction of every neutral ship taken by a belligerent vessel which started on her voyage with a crew sufficient for her own requirements only, and therefore unable to furnish prize crews for her captures. The adoption of such measures by the Russian Government could not fail to occasion a complete paralysis of all neutral commerce.

It appears to His Majesty's Government that no pains should be spared by the Russian Government in order to put an end without delay to a condition of things so detrimental to the commerce of this country, so contrary to acknowledged principles of international law and so intolerable to all neutrals. You should explain to the Russian Government that His Majesty's Government does not dispute the right of a belligerent to take adequate precautions for the purpose of preventing contraband of war, in the hitherto accepted sense of the words, from reaching the enemy; but they object to, and can not acquiesce in, the introduction of a new doctrine under which the well-understood distinction between conditional and unconditional contraband is altogether ignored, and under which, moreover, on the discovery of articles alleged to be contraband, the ship carrying them is, without trial and in spite of her neutrality, subjected to penalties which are reluctantly enforced even against an enemy's ship. (Parliamentary Papers, Russia, No. 1 (1905), p. 12.)

Many arguments may be urged against the destruction of neutral vessels. Before destruction in any case, the crew, passengers, and papers must be taken from the neutral vessel on board the belligerent ship. These are then immediately subject to all the dangers of war to which a war vessel of a belligerent is subject. Such a position may be an undue hardship for those who have not been engaged in the war and one to which they should not be exposed.

A belligerent vessel, with crew, passengers, and papers of the destroyed neutral vessel, may enter a neutral port to which entrance with the vessel itself would be forbidden. This is in effect almost an evasion of the general prohibition in regard to the entrance of prize, because on board the belligerent vessel is the evidence upon which the decision of the prize court of the belligerent will be rendered. It is certain that a neutral state would be very reluctant to admit within its territory a belligerent vessel having on board the crew and papers of one of its own private vessels which the belligerent had destroyed. The belligerent vessel might thus obtain the supplies from the neutral which would enable it to carry to its prize court the evidence in regard to capture.

It does not seem possible in view of precedent and practice to deny the right of a belligerent to destroy his enemy's vessel in case of necessity. Of course if the doctrine of exemption of private property at sea is generally adopted this right can no longer be sustained. The destruction of neutral vessels not involved in the service of the belligerent is sanctioned neither by precedent nor practice.

Conclusion.—Certainly the rules of the Institute of International Law adopted at Turin in 1882 are sufficiently liberal. These provide for the destruction of an enemy's vessel—

1. If unseaworthy;
2. If unable to accompany the fleet;
3. If there is danger from a superior force of the enemy;
4. If the captor can not without danger spare a prize crew, and
5. If the port to which the vessel should be conducted is too remote. (Annuaire 1883, p. 221.)

These rules apply to enemy vessels only, and not to neutral vessels. The attempts to justify the destruction of neutral vessels by reference to the above rules is in no way justified.

The rule contained in the United States instructions to blockading vessels and cruisers in 1898 (General Order

492) if restricted to enemy vessels would seem satisfactory provided the destruction of vessels is to be allowed at all. The rule thus restricted would read:

If there are controlling reasons why enemy vessels may not be sent in for adjudication, as unseaworthiness, the existence of infectious disease, or the lack of a prize crew, they may be appraised and sold; and if this can not be done, they may be destroyed. The imminent danger of recapture would justify destruction, if there was no doubt that the vessel was good prize. But in all such cases all the papers and other testimony should be sent to the prize court in order that a decree may be duly entered.

If a seized neutral vessel can not for any reason be brought into port for adjudication it should be dismissed.